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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR KING COUNTY**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 vs.

12 CONNER MICHAEL SCHIERMAN,

13 Defendant.

NO. 06-1-06563-4 SEA

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER ON
DEFENDANT'S MOTION TO SEAL
EXHIBITS PURSUANT TO GR 15

14 THIS MATTER came on for hearing before the Honorable Gregory Canova on August
15 29, 2006, regarding the defendant's Motion to Seal Exhibits to both his CrR 8.3(b) Motion and
16 his Motion for a Protective Order under RCW 42.56.540, brought pursuant to General Rule
17 (GR) 15. The plaintiff, State of Washington, was represented by Norm Maleng, Prosecuting
18 Attorney for King County, through his deputy, Scott O'Toole. The defendant, Conner Michael
19 Schierman, appeared in person and was represented by his counsel, James Conroy and Debra
20 Redford.
21

22 The Court having considered the memoranda submitted by the parties and having heard
23 the argument of counsel, and being fully advised in the premises, now makes and enters the
24 following:
25

1 FINDINGS OF FACT

2 I.

3 On July 20, 2006, the defendant was booked into the King County Jail on investigation
4 of four counts of Aggravated Murder in the First Degree and one count of Arson in the First
5 Degree. At the time the defendant was booked into jail, a "Superform" was submitted by the
6 Kirkland Police Department to the jail, providing a factual summary of the basis for a
7 determination of probable cause on which to hold the defendant in custody. The Superform is
8 a publicly accessible document.
9

10 II.

11 Later that same day, July 20, 2006, the defendant appeared on the First Appearance
12 Calendar in the King County Jail, at which time the judge made an initial determination
13 regarding the existence of probable cause to hold the defendant in custody and to set bail.
14

15 III.

16 On July 24, 2006, the defendant was charged with four counts of Aggravated First
17 Degree Murder and one count of First Degree Arson. The factual basis for those charges was
18 contained in the Certification for Determination of Probable Cause, filed at the same time.
19

20 IV.

21 Later that same day, July 24, 2006, the Kirkland Police Department released
22 approximately 301 pages of the case file in response to a Public Disclosure Act (PDA) request
23 from a local television news entity, KING 5 TV.
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1 V.

2 Later that same day, July 24, 2006, KING 5 TV reported on its 10:00 and 11:00 news
3 broadcasts details of information released earlier in public documents (the Superform and
4 Certification) and certain documents contained in the materials received from the Kirkland
5 Police Department in response to the PDA request.
6

7 VI.

8 On July 25, 2006, the Kirkland Police Department acknowledged publicly that they had
9 mistakenly released discovery documents in response to the PDA request and apologized for
10 doing so. At the request of the Kirkland Police Department, KING 5 TV removed from its
11 website the story that aired the evening before and returned the case file documents it had
12 received.
13

14 VII.

15 On July 30, 2006, the defendant filed a Motion to Dismiss for Governmental
16 Misconduct Pursuant to 8.3(b) “due to the arbitrary action and governmental misconduct” by
17 the Kirkland Police Department in releasing documents to KING 5 TV pursuant to the PDA
18 request. At the same time, the defendant filed a Motion to Seal Exhibit to 8.3(b) Motion; i.e.,
19 to seal the 301 pages of material released by the Kirkland Police Department.
20

21 VIII.

22 In response to additional requests for disclosure under the PDA by other media outlets,
23 the Kirkland Police Department prepared a redacted version of the materials released to KING
24 5 TV on July 24, 2006. Those materials total approximately 56 pages and contain internal
25 redactions within those pages.

1 IX.

2 In response to the redacted version of the materials prepared by the Kirkland Police
3 Department, counsel for the defendant prepared a redacted version of the redacted Kirkland
4 Police materials. The defendant also objected to the release of any portion of the original 301
5 pages of material originally released by the Kirkland Police Department and brought a Motion
6 for a Protective Order, pursuant to RCW 42.56.540. The defendant has moved that the two
7 redacted versions referred above also be sealed, pursuant to GR 15.
8

9 X.

10 The court reviewed *in camera* the three sets of investigative records referenced in
11 paragraph IX, above.
12

13 CONCLUSIONS OF LAW

14 I.

15 This Court has jurisdiction over the defendant and the subject matter in the above-
16 entitled cause.

17 II.

18 This issue is governed, in the first instance, by RCW 42.56.540. That statute permits
19 the defendant to bring a motion to preclude the disclosure of documents if there is an
20 applicable and relevant exemption from disclosure under the Public Disclosure Act.
21

22 III.

23 The case authority on this issue has evolved in recent years. In Dawson v. Daly, 120
24 Wn.2d 782, 845 P.2d 995 (1993), the Washington Supreme Court held that the PDA section
25 governing the injunction of the examination of a public record creates an independent basis

1 upon which the court may find that disclosure is not required if the court, upon a request for an
2 injunction, finds that disclosure is not in public interest and would cause substantial and
3 irreparable damage to a person or vital governmental function. In P.A.W.S. v. University of
4 Washington, 125 Wn.2d 243, 884 P.2d 592 (1994), the Washington Supreme Court held that
5 the PDA section governing the injunction of the examination of a public record does not create
6 an independent basis upon which the court may find that disclosure is not required; rather, it
7 merely provides a mechanism or procedure whereby the court may look to see if any of the
8 statutory exemptions apply. As a result, this court must focus on the existing exemptions
9 under the PDA to determine whether, on a case-by-case basis, and consistent with Cowles v.
10 Spokane Police Dep't., 139 Wn.2d 472, 987 P.2d 620 (1999), material contained in discovery
11 sought through the PDA should be disclosed and, if not, whether there is a sufficient basis to
12 enjoin disclosure.
13
14

15 IV.

16 The Order entered today in this case captioned “Findings of Fact, Conclusions of Law
17 and Order on Defense Motion for Protective Order Pursuant to the Public Disclosure Act” is
18 incorporated by reference and specifically relied upon herein.
19

20 V.

21 After reviewing the discovery material initially released by the Kirkland Police
22 Department on July 24, 2006 (totaling 301 pages), the redacted material prepared by the
23 Kirkland Police Department (totaling 56 pages) and the supplemental redactions proposed by
24 counsel for the defendant, this court concludes that there is a body of material that has been
25 properly excluded from release by the Kirkland Police Department on the grounds that such

1 material affects the right of privacy of an individual pursuant to the investigative records
2 exemption, and/or that disclosure would detrimentally affect law enforcement, and/or that
3 disclosure would adversely affect the trial process or privacy rights of the defendant. Further,
4 the court finds that non-disclosure is necessary and that the circumstances of this case
5 constitute compelling circumstances that outweigh any public interest in access to the
6 information sought.
7

8 VI.

9 This court finds that compelling circumstances exist that justify sealing in their entirety,
10 pursuant to GR 15(2), the discovery material initially released by the Kirkland Police
11 Department on July 24, 2006.
12

13 VII.

14 This court further finds that compelling circumstances exist that justify sealing,
15 pursuant to GR 15(2), the redacted discovery material prepared by the Kirkland Police
16 Department in response to supplemental PDA requests from the media.
17

18 VIII.

19 This court further finds that the redacted version of discovery material prepared by the
20 Kirkland Police Department, supplemented by redactions imposed by the court, may be
21 disclosed to the media pursuant to the PDA requests that have been made.
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IX.

The court incorporates by reference its oral findings and conclusions made at the hearing on the motion.

DATED this 7th day of September, 2006.

/s/
GREGORY P. CANOVA
Judge of the Superior Court